

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

VERSATA SOFTWARE, INC., f/k/a §
TRILOGY SOFTWARE, INC., and §
VERSATA DEVELOPMENT GROUP, §
INC., f/k/a TRILOGY DEVELOPMENT §
GROUP, INC., §

Plaintiffs, §

V. §

AMERIPRISE FINANCIAL, INC., §
AMERIPRISE FINANCIAL SERVICES, §
INC., AMERICAN ENTERPRISE §
INVESTMENT SERVICES, INC., §

Defendants, §

AMERIPRISE FINANCIAL, INC. §

Counter-Plaintiff, §

V. §

VERSATA SOFTWARE, INC., f/k/a §
TRILOGY SOFTWARE, INC., and §
VERSATA DEVELOPMENT GROUP, §
INC., f/k/a TRILOGY DEVELOPMENT §
GROUP, INC., §

Counter-Defendants. §

CAUSE NO. 1:14-cv-12

NOTICE OF REMOVAL

Ameriprise Financial, Inc. (“Ameriprise”) hereby removes the state-court action, Cause No. D-1-GN-12-003588; *Versata Software, Inc., et al. v. Ameriprise Financial, Inc., et al.*; in the 53rd Judicial District Court of Travis County, Texas to this Court. Removal is warranted under 28 U.S.C. § 1454, 28 U.S.C. § 1338, and 28 U.S.C. § 1367. In support of removal, Ameriprise states as follows:

1. Ameriprise filed and served its First Amended Counterclaim on October 31, 2013 in the District Court in Travis County, Texas, which is located within the Western District of Texas.

2. On December 20, 2013, Plaintiffs/Counter-Defendants Versata Software, Inc. f/k/a Trilogy Software, Inc. and Versata Development Group, Inc. f/k/a Trilogy Development Group, Inc. (together “Versata”) responded to Ameriprise’s First Amended Counterclaim by asserting that Ameriprise’s counterclaims are barred, in whole or in part, “*because they are preempted by Copyright law.*” 2nd Am. Answer (Tenth Defense) (emphasis added). Ameriprise received a copy of Versata’s Second Amended Answer on or about December 26, 2013, through its outside counsel. Prior to its Second Amended Answer, Versata had asserted no affirmative defense in any way implicating Copyright law or federal preemption in any pleading, motion, or other paper.

3. Ameriprise’s First Amended Counterclaim, on its face, states only state law claims for breach of contract, breach of warranty, constructive trust, and declaratory judgment. However, a state law claim is sometimes preempted by federal copyright law such that federal subject matter jurisdiction exists over the claim and the action. *Globeranger Corp. v. Software AG*, 691 F.3d 702, 705–06 (5th Cir. 2012) (The “‘grant of exclusive jurisdiction to the federal district courts over civil actions arising under the Copyright Act, combined with the preemptive force of § 301(a), compels the conclusion that Congress intended that state-law actions preempted by § 301(a) of the Copyright Act arise under federal law.’ Thus, ‘the preemptive force of § 301(a) of the Copyright Act transforms a state-law complaint asserting claims that are preempted by § 301(a) into a complaint stating a federal claim for purposes of the well-pleaded

complaint rule.”) (quoting *Rosciszewski v. Arete Assocs., Inc.*, 1 F.3d 225, 232–33 (4th Cir.1993)).

4. Whether a state law claim is preempted in whole or in part by copyright law is, of course, exclusively a federal question. *See, e.g., Spear Marketing, Inc. v. Bancorp South Bank*, 2013 WL 2149570 (N.D. Tex. May 16, 2013); *see also* 28 U.S.C. § 1338 (“No State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to . . . copyrights.”). If Ameriprise’s counterclaims are “plausibly” preempted, in whole or in part, federal jurisdiction exists over this action. *Globeranger Corp.*, 691 F.3d at 706.¹ If they are not “plausibly” preempted, then no federal jurisdiction exists. *Id.*

5. When the sole federal question presented is copyright, any party to the state court case may remove the action; removal is not limited to a defendant. 28 U.S.C § 1454(a)-(b) (if removal is based “solely on this section . . . the action may be removed by any party.”). The federal court then may exercise supplemental jurisdiction over any remaining claims that arise out of the same case or controversy. 28 U.S.C § 1454(d); 28 U.S.C § 1367.

6. Copies of all process, pleadings, orders, the state court docket sheet, and a list of all counsel of record are attached collectively as **Exhibit A**, and a copy of this Notice of Removal is being served to Plaintiffs’ counsel and filed with the district clerk for Travis County, Texas pursuant to 28 U.S.C. § 1446(d).

¹ Ameriprise is unaware of any basis for Versata to have asserted that its counterclaims are pre-empted by copyright law nor has Versata yet provided the legal support for this affirmative defense of Copyright preemption. However, because of the exclusive federal jurisdiction that would exist if preemption does apply, and because Versata has asserted this preemption, Ameriprise properly removes the case so that a federal court possessing jurisdiction can resolve this matter.

7. This action is removed within 30 days of Ameriprise's receipt of Versata's Second Amended Answer asserting that Ameriprise's counterclaims are subject to copyright preemption. 28 U.S.C. § 1446(b)(3).

WHEREFORE, Ameriprise Financial, Inc. respectfully removes this action from Travis County, Texas, 53rd District Court, to this Court. No previous application has been made for the relief requested herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on counsel of record as indicated below on the 7th day of January 2014.

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